

**KRONENBERGER BURGOYNE, LLP**

Karl S. Kronenberger (Bar No. 226112)

Jeffrey M. Rosenfeld (Bar No. 222187)

Deepa Krishnan (Bar No. 228664)

150 Post Street, Suite 520

San Francisco, CA 94108

Telephone: (415) 955-1155

Facsimile: (415) 955-1158

karl@kronenbergerlaw.com

jeff@kronenbergerlaw.com

deepa@kronenbergerlaw.com

Attorneys for Defendant MIKHAIL FIKS

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**LIMO HOSTING, INC.**, a Florida  
corporation, **OLEG GRIDNEV**, an  
individual,

Plaintiffs,  
v.

**MIKHAIL FIKS** (aka "**Mike Fiks**") d/b/a  
"**FIXEDSITES.COM**", an individual, and  
**DOES 1-10.**

Defendant.

CASE NO. 3:08-cv-02474-BZ

**DEFENDANT FIKS'S AMENDED  
NOTICE OF HEARING OF MOTION TO  
DISMISS COMPLAINT UNDER  
12(B)(6)**

Date: October 8, 2008

Time: 10:00 AM

Ctrm: G, 15<sup>th</sup> Floor

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on May 21, 2008, Defendant Mikhail Fiks ("Fiks"), noticed a hearing for July 11, 2008 before the Honorable Samuel Conti for a Motion to Dismiss (the "Motion") (D.E. No. 5) Plaintiffs Limo Hosting, Inc. and Oleg Gridnev's (collectively, "Plaintiffs") Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). On July 8, 2008, the Court took the noticed hearing off-calendar, stating that it intended to decide the Motion without oral argument or appearance. Subsequently, and before the Court issued its ruling on the Motion, this matter was reassigned to the Honorable Bernard Zimmerman on August 15, 2008.

**PLEASE TAKE FURTHER NOTICE** that Fiks accordingly re-notices its Motion for October 8, 2008, or as soon thereafter as the Motion may be heard by the Honorable Bernard Zimmerman in Courtroom G on the 15th floor of United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Ave., San Francisco, CA 94102.

This Motion seeks to dismiss the Complaint because: 1) Plaintiffs have not pleaded secondary meaning of the LIMO HOSTING mark or Fiks's use thereof as required for statutory and common law trademark infringement; 2) Plaintiffs have not pleaded that their website contains protectable trade dress, and that their website is non-functional; 3) Plaintiffs' claim for False Designation or Origin is not based on any recognized cause of action and duplicates Plaintiffs' other causes of action; 4) Plaintiffs' Complaint does not contain allegations that Fiks made statements disparaging the quality of Plaintiffs' property as required to support a claim for trade libel; 5) Plaintiffs' Complaint does not contain sufficient allegations about the relationship between Plaintiffs and third parties to support interference claims; and 6) Plaintiffs' Section 17200 claim is purely derivative of its other claims, and therefore cannot stand.

This Motion is based on Federal Rule of Civil Procedure Rule 12(b)(6), Fiks's Memorandum of Points and Authorities filed on May 21, 2008 (D.E. No. 5), Fiks's Reply in Support of Memorandum of Points and Authorities filed on June 27, 2008 (D.E. No.

12), all pleadings on file in this case, and such further evidence and arguments that may be presented prior to or at the hearing on this Motion.

Dated: August 25, 2008

Kronenberger Burgoyne, LLP

By: \_\_\_\_\_/s/  
Deepa Krishnan

Attorneys for Defendant,  
MIKHAIL FIKS

KRONENBERGER BURGOYNE, LLP  
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San Francisco, CA 94108  
www.KronenbergerLaw.com